Supreme Court, U.S.
FILED

No. (1) 99 724

OCT 27 1999
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In The

Supreme Court of the United States

PAUL A. LOUIS and BETHANY B. COLEMAN,

Petitioners,

v.

CHARLES W. GRANT, Trustee,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the federal courts may ignore Full Faith and Credit of a final state court judgment of dissolution of marriage and redetermine "finality" of a final attorney's fee provision contained in the final dissolution judgment; and whether the abstention doctrine, applied traditionally to state family law support matters, required the Eleventh Circuit to certify a "novel" issue of state domestic relations policy for resolution by the Supreme Court of Florida, pursuant to *Fla. Const., Article V, §3(b)(6)?*

LIST OF PARTIES TO JUDGMENT SOUGHT TO BE REVIEWED

1. C. Randolph Coleman, Debtor.

2. Bethany B. Coleman, Debtor's Ex-Spouse.

3. Sinclair, Louis, Heath, Nussbaum & Zavertnik, P.A. and Paul A. Louis, Esquire.

4. Charles W. Grant, Trustee in Bankruptcy.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, BETHANY B. COLEMAN, and PAUL A. LOUIS, ESQUIRE, through undersigned counsel, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit, affirming orders and judgments of the United States District Court for the Middle District of Florida, Jacksonville Division, and the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division. The judgments and opinions below invalidated Petitioners' recorded lien for an attorney's fee award incorporated in a final judgment of dissolution of marriage entered prior to commencement of bankruptcy and affirmed on appeal by a Florida state court prior to commencement of bankruptcy. Petition for rehearing en banc was denied by the Eleventh Circuit on August 6, 1999.

OPINIONS OF THE COURTS BELOW

The written opinion of the Court of Appeals for the Eleventh Circuit is included in the appendix. *In Re Coleman*, No. 98-2560 (11th Cir. May 17, 1999). The written opinion of the United States District Court, Middle District of Florida, Jacksonville Division also is included in the appendix. *In Re Coleman*, No. 95-476-Civ-J-21 (M.D.Fla.March 18, 1998). The final summary judgment and findings of fact and conclusions of law in the written decision of the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, also is included in the appendix. *In Re Coleman*, No. 91-6155-BKC-3F7,

Adversary No. 93-255 (Bkrtcy.M.D.Fla.April 11, 1995); see also, *In Re Coleman*, 192 B.R. 268 (Bkrtcy.M.D. Fla.1995).

STATEMENT OF BASIS FOR JURISDICTION

The judgment of the United States Court of Appeals, Eleventh Circuit, was entered on May 17, 1999. Petitioners moved for rehearing en banc, which was denied on August 6, 1999. Rule 13(3.), Rules of the Supreme Court of the United States. This petition is filed pursuant to Rules 10 & 13, Rules of the Supreme Court of the United States. Jurisdiction in this court is invoked pursuant to 28 U.S.C. §1254(1) & §2101(c).

APPLICABLE PROVISIONS

(Set Out in Full in Appendix)

1. Fla. Const., Article V, §3(b)(6):

(b) **Jurisdiction.** – The supreme court:

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

2. Section 55.10(1), Florida Statutes:

(1) A judgment, order, or decree becomes a lien on real estate in any county when a certified copy of it is recorded in the official records or

judgment lien record of the county, whichever is maintained at the time of recordation, and it shall be a lien for a period of seven years from the date of the recording. . . . [1]

3. Title 11, United States Code §101 (36) & (37):

In this title –

(36) "judicial lien" means lien obtained by judgment, levy, execution, sequestration, or other legal or equitable process or proceeding;

(37) "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation; . . .

STATEMENT OF CASE AND FACTS

The course of proceedings and facts below are undisputed because most of the salient facts were admitted by the Respondent trustee in bankruptcy in response to a request for admissions served in the bankruptcy court by Petitioners. These requests for admission and Respondent's response to it is included in the appendix. A final judgment of dissolution of marriage was entered against the debtor in bankruptcy, C. Randolph Coleman on 9 July 1990. *In Re Coleman*, supra, 192 B.R. at page 269. The

[1] This excerpt of Section 55.10(1), Florida Statutes preexisted a statutory amendment effective October 1, 1993. The complete quotation of the statute with the 1993 amendment is contained at App. 28. The amended language did not affect "judgment liens existing on the effective date of this act. . . . " See, *Laws of Florida, 1993*, Section 11, Ch. 93-250, effective Oct. 1, 1993. There is no dispute Petitioners' judgment was recorded 9 July 1991. See, page 4, infra.

judgment contained a $40,000 attorney's fee award, payable in installments of $2,500 per quarter, in favor of the Petitioners, Debtor's ex-spouse, Bethany B. Coleman, and her counsel in state court dissolution of marriage proceedings, Paul A. Louis, Esquire. (*Id.*)

Because the judgment was final, Mr. Coleman appealed it to the state appellate court of last resort, the District Court of Appeal, Third District of Florida. (*Id.* at page 269) While his state court appeal was pending, Petitioners recorded the final judgment of dissolution of marriage in Columbia County, Florida on 9 July 1991. Mr. Coleman owned the Columbia County land which had been awarded to him as a final property award in the state court dissolution judgment. (*Id.* at page 269)

On 14 November 1991, the District Court of Appeal, Third District of Florida affirmed per curiam, without a written opinion. (*Id.*) Eight days later, Mr. Coleman initiated a Chapter 7 bankruptcy proceeding, on 22 November 1991. (*Id.* at page 270)

The Respondent, Charles W. Grant, is Mr. Coleman's trustee in bankruptcy. Respondent filed an adversary proceeding in the bankruptcy court seeking to invalidate the pre-petition lien recorded in Columbia County, Florida. He alleged that despite the pre-bankruptcy recording of the final judgment, affording constructive notice to the trustee and other potential bona fide purchasers of the land, Respondent could sell the property in disregard of the judgment priority pursuant to 11 U.S.C. §363(f)(4). (*Id.* at page 270)

Respondent admitted: the $40,000 attorney's fees award to Petitioners in the recorded final dissolution

judgment constituted (1) a debt [see, 11 U.S.C. §101(37), supra]; (2) had been determined by the bankruptcy court as a non-dischargeable debt in bankruptcy [see, *In Re Coleman*, supra, 192 B.R. at page 270]; (3) had been specifically reviewed by the state appellate court and affirmed prior to the bankruptcy; and (4) was a determinate, non-modifiable obligation subject to *res judicata* before the bankruptcy commenced.

The Bankruptcy Court for the United States Middle District of Florida, Jacksonville Division, rendered a decision containing findings of fact and conclusions of law predicated on motions for summary judgment filed by both Respondent and Petitioners. *In Re Coleman*, supra. The court recognized that under Florida law no "magic" words such as "for which let execution issue" are needed "to make a judgment final." (*Id.* at page 270).

The Bankruptcy Court then acknowledged " . . . it appears to be a *novel* question in this state and circuit, as to whether a final judgment of dissolution is a final judgment as to the attorney's fees awarded therein. . . . " (*Id.* at page 271). The court resolved this case of first impression under Florida law by relying on three cases decided in foreign states, whose courts had *not* considered whether attorney's fees awarded in a final divorce decree were final, but only other forms of support awards in light of statutes peculiar to those three states (Illinois, Arizona and Indiana). (*Id.*).

Petitioners appealed the Bankruptcy Court determination to the United States District Court for the Middle District of Florida, Jacksonville Division, which affirmed. They then sought review in the United States

Court of Appeals for the Eleventh Circuit, which reviewed the matter *de novo. Re Colortex Industries, Inc.*, 19 F.3d 1371, 1374 (11th Cir.1994). In the Eleventh Circuit, Petitioners requested that the court of appeals certify the question, which the bankruptcy court found was "novel" under Florida law and within the Eleventh Circuit, to the Supreme Court of Florida under *Rule 9.150, Florida Rules of Appellate Procedure*, authorizing this court and any court of appeals to certify "determinative" questions when "no controlling precedent of the Supreme Court of Florida" exists. See also, *Fla. Const., Article V, §3(b)(6)*, supra.

On May 17, 1999, the Eleventh Circuit affirmed finding, the subject "*Final* Judgment of Dissolution of Marriage is *not* a final order and cannot create a lien under Fla.Stat.ch.55.10." Petitioners moved for en banc rehearing, again requesting the court to certify the matter to the Supreme Court of Florida for resolution of a case of first impression under Florida law. On August 6, 1999, that motion was denied, and Petitioners now seek issuance of this court's discretionary writ of certiorari. This case poses an important question of federal abstention and for inter-sovereign comity when dealing with state domestic relations law and policy arising in a federal proceeding.

ARGUMENT IN SUPPORT OF GRANTING THIS PETITION

Federal abstention from state domestic relations law and policy has long been recognized, particularly when it concerns continuing supervision or involvement of the

state court in enforcing its orders "in the nature of support" or concerning child custody. *Simms v. Simms*, 175 U.S. 162, 20 S.Ct. 58, 44 L.Ed. 115 (1899). This court reaffirmed the validity of abstention from domestic relations support decrees in *Ankenbrandt v. Richards*, 504 U.S. 689, 704, 112 S.Ct. 2206, 2215, 119 L.Ed.2d 468 (1992). The court reaffirmed the "special proficiency" of the state courts to resolve issues arising under its domestic relations decrees. *Id.* at page 704.

Many reasons exist for federal abstention and comity, among them being the strong interest maintained by the states regarding matters of domestic relations policy and law, the superior competence of state courts in settling family disputes and the possibility of incompatible determinations in domestic proceedings involving continuing supervision of the state courts. E.g., *Ingram v. Hayes*, 866 F.2d 368 (11th Cir.1988); *Crouch v. Crouch*, 566 F.2d 486, 487 (5th Cir.1978).

Federal deference to state law and policy in domestic relations and other local matters is furthered by the Florida Constitution and Appellate Rules. *Rule 9.150, Florida Rules of Appellate Procedure* provides that this court or a court of appeals may certify "determinative" questions to the Supreme Court of Florida when there is "no controlling precedent of the Supreme Court of Florida." This procedural rule is in furtherance of the Florida constitutional provision recognizing inter-sovereign comity with the federal appellate courts. *Fla. Const., Article V, §3(b)(6);* see also, *Rule 9.030(2)(C), Florida Rules of Appellate Procedure.*

The federal Full Faith and Credit Clause protects finality among the 50 states of provisions of domestic relations judgments entered by state courts, including financial obligations of prospective support of family dependents. *Simons v. Miami Beach First National Bank*, 381 U.S. 81, 85 S.Ct. 1315, 14 L.Ed.2d 232 (1965); *Article IV, Section 1, U.S. Constitution*. Alluding to Full Faith and Credit, the Pennsylvania Supreme Court stated in *Buswell v. Buswell*, 377 Pa. 487, 105 A.2d 608 (Sup.Ct.1954):

> No one can cancel out his obligations by crossing a State line. His legal obligations travel with him as baggage that he cannot leave behind.

The same principles of the Full Faith and Credit clause should apply whether the "line crossed" is one from one state to another or is across the street from the state courthouse to the courthouse where a federal bankruptcy court performs its duties. Federal abstention and comity for state court sovereign decrees should not allow obligations created by state divorce decrees to become "baggage" left behind when one enters the bankruptcy court.

Title 11 U.S.C. §101(36) & (37), supra, contains a liberal definition of a "lien" and "judicial lien". The former is any " . . . charge against or interest in property to secure payment of a debt or performance of an obligation . . . " A judicial lien is defined by the Bankruptcy Code as a lien obtained "by judgment, levy, sequestration, or other legal and equitable process or proceeding . . . " State law often defines the validity of the three kinds of bankruptcy liens – statutory, judicial and consensual liens. 2 *Collier on Bankruptcy* ¶101.27 & 101.28 (15th ed.1979); 4 *Collier on Bankruptcy* ¶545.04[2] (15th ed.1979).

The judgments and opinions below failed to adhere to federal abstention practice or afford sovereign comity to a final state court divorce decree and policy of state law manifested by the plain meaning of §55.10, Florida Statutes. See, *Anderson v. North Florida Production Credit Ass'n*, 642 So.2d 88, 89 (Fla.1st DCA 1994). Final provisions of a Florida dissolution of marriage decree, awarding money, constitute liens against Florida real estate. Cf., *Lorenz v. Lorenz*, 157 Fla. 402, 26 So.2d 54, 58 (1946); see generally, *33 Fla.Jur.2d (rev.) Judgments and Decrees §422.*

For reasons discussed below, the failure to abstain and afford sovereign comity to finality of the Florida dissolution of marriage judgment dated 9 July 1990 is inconsistent with the Bankruptcy Court's own conclusion that the attorney's fee award in that judgment was "in the nature of support" thus the subject of continuing state court supervision and involvement to protect Petitioners' financial interests under the judgment and enforce a judicial and statutory lien arising under purely state law.

Debtor, C. Randolph Coleman, sought to "cancel out" financial obligations contained in the 1990 Florida final judgment of dissolution of marriage eight days after a state appellate court in Florida finally affirmed those obligations. He was unsuccessful in his effort to evade the final $40,000.00 attorney's fee provision by a discharge in bankruptcy. In an earlier adversary proceeding instituted by the debtor *pro se*, Mr. Coleman (a member of the Florida Bar), sought to discharge the final obligation to pay attorney's fees, which had been the subject of his unsuccessful state court appeal, determined prior to his petition in bankruptcy. The bankruptcy court ruled

adversely to the debtor. *In Re Coleman*, 152 B.R. 783, 784-785 (Bkrtcy.M.D.Fla.1993):

> The bankruptcy court must independently assess the character of an obligation arising out of divorce and determine whether it is in the nature of alimony. *In Re Harrell*, 754 F.2d 902 (11th Cir. 1985).
>
> This court has held that "unless the obligation to pay a spouse's attorney's fees is clearly in the nature of a property settlement, it will be deemed non-dischargeable." *In Re Whitehurst*, 10 B.R. 229, 230 (Bankr.M.D.Fla. 1981). The weight of the authority is in accord. *In Re Spong*, 661 F.2d 6 (2nd Cir.1981); *In Re Burch*, 100 B.R. 585 (Bankr.M.D.Fla.1989).
>
> The state court evaluated defendant's [debtor's] ability to pay and the recipient spouse's [Petitioner Bethany B. Coleman's] need in making the award of fees. The obligation was not intended as a property settlement and was in the nature of support. Accordingly, the fees shall be excepted from defendant's discharge pursuant to [11 U.S.C.] Section 523(a)(5).

However, after the debtor's final obligation to pay a $40,000.00 attorney's fee was determined nondischargeable in bankruptcy, the same bankruptcy court determined that the lien created by pre-bankruptcy recording of the final judgment of dissolution of marriage was invalid. The court did so on a separate adversary complaint filed by Mr. Coleman's trustee in bankruptcy, reasoning that the dissolution of marriage fee award to Petitioners, despite its admitted finality, was not a "lien" under §55.10, Florida Statutes. *In Re Coleman*, supra, 192 B.R. 268.

This case merits consideration of the United States Supreme Court. The lower federal courts misconstrued §55.10, Florida Statutes in a manner inconsistent with the precepts of the Full Faith and Credit Clause. A final and binding character is required among the states for a final money judgment for attorney's fees in a domestic relations case by that clause of the U.S. Constitution. The federal courts misconceived that the subject matter regarding the creation of a lien upon a final attorney's fee provision of a domestic relations judgment, "in the nature of support", exclusively is a matter of state law.

The bankruptcy court found no controlling precedent of the Supreme Court of Florida exists on the question of whether recording of a final attorney's fee provision contained within a final judgment dissolution of marriage creates a judicial lien under §55.10 Florida Statutes. (See, *192 B.R. at page 271*). The Eleventh Circuit Court of Appeals should have certified the question to the Florida Supreme Court under Rule 9.150, supra.

A state court constitutional provision like *Fla. Const., Article V §3(b)(6)* and an appellate rule like *Rule 9.150, Florida Rules of Appellate Procedure* supra, furthers intersovereign comity. The rule not only promotes comity in diversity of citizenship cases. Since bankruptcy courts often rely on state law, the Florida constitutional provision as implemented by Rule 9.150, supra, should be invoked whenever a "novel" determinative question of state law arises in a federal proceeding.

Prior precedent of this court and the court of appeals reflect that questions relating to Florida domestic relations law and other substantive issues affecting the outcome of an appeal from bankruptcy proceedings have been certified to the Supreme Court of Florida when no controlling precedent exists. *Aldrich v. Aldrich*, 375 U.S. 75, 84 S.Ct. 184, 11 L.Ed.2d 141 (1963); *Matter of Cedars of Lebanon Hospital Corp., Inc.*, 546 F.2d 63 (5th Cir.1977); see also, *Gaston v. Pittman*, 405 F.2d 869 (5th Cir.1969).

In *Stone v. Wall*, 135 F.2d 1438, 1442 (11th Cir.1998), the court of appeals certified a question "of first impression" to the Florida Supreme Court when no prior precedent "squarely" addressed an issue of whether a tort claim for interference with a parent/child relationship exists under Florida law. The Eleventh Circuit certified this issue although the court of appeals also held the abstention standard of *Ankenbrandt v. Richards*, supra, had not been met because the "novel" point in *Stone v. Wall*, supra, was whether a tort existed under Florida law, not whether a state court domestic decree or policy in any sense was disturbed by a potentially incompatible federal decision.

The Bankruptcy Court and the United States District Court lacked authority to certify a "novel" question to the Florida Supreme Court under the Florida constitution and Rule 9.150. *Liberty Mut. Ins. Co. v. Electronic Systems, Inc.*, 813 F.Supp. 802 (S.D.Fla.1993). Consequently, those courts could only exercise an "educated guess" of domestic relations Florida law. Since no Florida case answered the "novel" point, the Florida federal judiciary found state court cases in Arizona, Indiana and Illinois involving different state statutes. These decisions also did not

concern a recorded final award of attorney's fees in a final divorce judgment. Rather than engage in such "guessing", it is better practice for a determinative question of state law to be certified to the Florida Supreme Court instead of allowing the federal courts to serve as a surrogate state supreme court. See, *Trail Builders Supply Co. v. Reagan*, 409 F.2d 1059 (5th Cir.1969).

While standing in the shoes of the Florida Supreme Court, the lower federal judiciary changed a final, nonmodifiable attorney's fee award of $40,000, affirmed following a plenary state court appeal, into an interlocutory order. The "finality" of the order was unwoven by the federal bankruptcy court ostensibly because the fee award was determined to be "in the nature of support". *In Re Coleman*, supra, 152 B.R. at 785. Thus, the bankruptcy court reasoned the fee award was *not* "conclusive" [albeit Respondent *admitted* the contrary] nor was it a "debt" [although again Respondent *admitted* the contrary]. Therefore, the bankruptcy court concluded that a lien does not arise simply because the state court supervising the final divorce decree *might* need to take further action to enforce the terms of an otherwise *final, binding and conclusive* fee award in Petitioners' favor.

The flaw in this reasoning is that just because a fee award in a final domestic relations judgment of a state court *resembles* "support" of a former spouse does not mean its *identical finality* to a final money judgment can be ignored under state law protecting the priority of liens against real property to secure monetary debts owed to a judgment creditor. In truth, the incipient "support" basis for a monetary and nonmodifiable fee award is all the

more reason to protect priority as a judgment lien under Florida's domestic relations law and policy.

No sister state court in the United State may permissibly modify the subject $40,000.00 attorney's fee judgment in the manner in which the federal bankruptcy court simply swept away its quintessential finality. The trustee in bankruptcy, Respondent herein, admitted *res judicata* precluded anyone from disturbing the final and binding nature of the $40,000.00 attorney's fee award contained in the 9 July 1990 final judgment of dissolution of marriage in favor of Petitioners.

Appellants recorded the final judgment of dissolution of marriage, including a nonmodifiable $40,000 attorney's fee award, while Mr. Coleman's plenary state court appeal of the final order was on appeal. The judgment was affirmed. The fee award became *res judicata*. It can never again could be judicially modified. *Gordon v. Gordon*, 59 So.2d 40, 43 (Fla.1952). The $40,000 award had identical characteristics of a money judgment under Florida law.

The state court judgment was recorded before the debtor, Mr. Coleman initiated a federal bankruptcy proceeding, and the finality of the attorney's fee award of $40,000 was determined in state court before a bankruptcy case began. Florida law affords a dissolution of marriage judgment "first in time is the first in right" priority status to later-acquired liens, including rights acquired by a trustee in bankruptcy on behalf of unsecured creditors in a later filed bankruptcy proceeding. *First Fed. Sav. & Loan Ass'n. v. Fisher*, 60 So.2d 496 (Fla.1952); *Bauer v. Kaplan*, 233 So.2d 430 (Fla.3d DCA

1970); *Paterson v. Brafman*, 530 So.2d 499 (Fla.3d DCA 1988); *Flammer v. Flammer*, 150 B.R. 474 (Bkrtcy.M.D. Fla.1993).

Section 55.10(1) unambiguously provides:

> "A judgment, order or decree becomes a lien on real estate in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, whichever is maintained at the time of recordation, and it shall be a lien for a period of 7 years from the date of the recording."

The Respondent concedes a final judgment of dissolution of marriage is entitled to recording under §28.222(1)(c), Florida Statutes. He also concedes that §695.11, Florida Statutes provides that an instrument entitled to be recorded is deemed officially recorded from the time the clerk of a county court in the state affixes the official register numbers, which creates constructive priority of a lien.

The language of §55.10(1), requires no action, other than recording, for a final money judgment, order or decree to constitute a lien under Florida law. Moreover, even the definition of a "judicial lien" under federal bankruptcy law contemplates one " . . . obtained by judgment, levy, sequestration or other legal or *equitable* process *or proceeding* . . . " 11 U.S.C. §101(36), supra. Florida law traditionally defines domestic relations cases as "equitable proceedings" in which final judgments may be entered.

The bankruptcy court even acknowledged in its legal conclusions:

> "Some courts in this circuit have decided that so-called "magic" words, such as "for which let execution issue" are not required to make a judgment final. *Walsh [In Re Walsh (Ewers v. Walsh)*, 123 B.R. 925], supra at 928 [(Bankr. M.D. Fla. 1991) (Corcoran, J.)]. (holding that failure to include the "magic" language of standard form books is not fatal to a determination that an order is a final judgment.) *DuBreuil v. Regnvall*, 527 So.2d 249 (Fla.3d DCA 1988) (explaining that execution of a judgment should not depend on the judgment containing the "archaic" – but customary – words "for which let execution issue"). *Chan v. Brunswick Corp.*, 388 So.2d 274 (Fla.4th DCA 1980) (holding that words "for which let execution issue" are not essential to finality of judgment). *Haines City v. Allen*, 549 So.2d 678 (Fla.2d DCA 1989) (stating that language is not essential to final judgment). Plaintiff and Defendants, in their Memorandums submitted to the Court, *agree* that "magic" words are not necessary to create a final judgment.

A Florida dissolution of marriage judgment has "higher status" than ordinary money judgments, providing an "arsenal of mechanisms, both criminal and civil, . . . " for enforcement of state court domestic relations judgments. See generally, *Lascaibar v. Lascaibar*, 715 So.2d 1042 (Fla.3d DCA 1998); *Brown v. Smith*, 705 So.2d 682, 684-685 (Fla.4th DCA 1998). The ability of a Florida trial court " . . . to enforce its [final divorce] decree is fettered only by a lack of imagination." *Lascaibar v. Lascaibar*, supra, 715 So.2d at 1043.

Therefore, the lack of need for "magic words" to create "finality" in ordinary money judgments has even

higher meaning under Florida domestic relations policy and practice when trial judges have discretionary and equitable authority to enforce monetary provisions (including imposition of liens) of a judgment limited only by imagination.

Equitable liens, as well as judgment liens, are entitled to priority under §55.10, Florida Statutes. *Gordon v. Ruvin*, 664 So.2d 1078 (Fla.3d DCA 1995). A judgment lien arises when the identity of the lienor, the property bound by the lien and the amount of the lien are certain. *United States v. Oswald and Hess Co.*, 345 F.2d 886, 888 (3d Cir.1965).

The Supreme Court of Florida has adopted the reasoning and holding of this court in *White v. New Hampshire Department of Employment Security*, 455 U.S. 445, 102 S.Ct. 1162, 71 L.Ed.2d 325 (1982) that a post-judgment motion for attorney's fees raises a "collateral and independent claim" which the state trial court has jurisdiction to entertain within a reasonable time, *notwithstanding that the litigation of the main case may have concluded with finality. Finkelstein v. North Broward Hospital District*, 484 So.2d 1241 (Fla.1986); see also, *Holm v. Sharp*, 715 So.2d 1159 (Fla.5th DCA 1998). [collateral final judgment for attorney's fees awarded notwithstanding that judgment debtor had already satisfied a money judgment entered on the main claim in the litigation.]

Therefore, it is common practice in Florida for attorney's fee awards to be made, unlike the award in this case, *after* entry of a final judgment of dissolution of marriage as a "collateral and independent claim" of a needy recipient spouse. Consequently, an attorney's fee award is an "independent" judgment whether or not it is

included within the final judgment of dissolution of marriage. Further, such an "independent" judgment – as the Bankruptcy Court acknowledged in its written opinion – needs no "magic words" like "for which execution issue" to make an "independent" attorney's fees judgment "final". In short, a monetary award of fees properly recorded is no different than a monetary award recovered by a bank on promissory note which is properly recorded; both are *final judgments* entitled to priority as a lien under §55.10, Florida Statutes.

The Respondent conceded the amount of the $40,000.00 attorney's fee award was certain, not modifiable, a judgment "debt" and subject to *res judicata*. The attorney's fee award in the dissolution judgment was *determinate* and *nonmodifiable*. The test under Florida law in determining whether or not a money provision of a recorded dissolution of marriage constitutes a lien on real property is whether or not the provision is "indeterminate and subject to adjustment". *Lorenz v. Lorenz*, supra, 26 So.2d at 58, citing *Robinson v. Robinson*, 154 Fla. 464, 18 So.2d 29 (1944). If the dissolution judgment creates a money provision *not* subject to "adjustment" by the court subsequently, like Petitioners' $40,000.00 fee award, then the money provision constitutes a lien against real property under §55.10(1). *Ibid.*

Respondent admitted that the $40,000 attorney's fee award cannot in any manner ever be changed by the court. Florida law provides that such monetary provisions may be enforced, not only by writs of execution, but by other summary post-judgment equitable proceedings. *Fla.R.Civ.P. 1.570(a)*; compare *11 U.S.C. §101 (36) & (37).*

The public policy of Florida encourages broad enforcement of monetary provisions of dissolution of marriage judgments, at law or equity. *Gibson v. Bennett*, 561 So.2d 565 (Fla.1990); *Fishman v. Fishman*, 656 So.2d 1250 (Fla.1995); *James v. James*, 648 So.2d 287 (Fla.3d DCA 1995).

Nonmodifiable money provisions of dissolution of marriage judgments, duly recorded, have identical characteristics of a recorded money judgment. No one can collaterally attack Appellants' $40,000.00 fee award in the final judgment; it is constitutionally entitled to Full Faith and Credit. Any enforcement action necessary to collect the fee award prior to the petition in bankruptcy was ministerial.

The State of Florida has the right to a public policy affording "higher status" and special protection, including recorded liens, to secure monetary provisions "in the nature of support". *Fishman v. Fishman*, supra; *Lascaibar v. Lascaibar*, supra; *Brown v. Smith*, supra. That coherent state public policy should not be disturbed by the federal courts, particularly when state law must be applied as in a diversity of citizenship case or under federal Bankruptcy Law.

The higher status of attorney's fee awards contained in Florida domestic relations judgments arguably is an even more urgent public policy consideration than a similar status afforded to other equitable awards "in the nature of support". Recent statistics of the Florida Supreme Court demonstrate that *both* parties to dissolution of marriage proceedings within the State of Florida, in the majority of cases, are unrepresented by counsel due

to the expense involved in retaining competent counsel. Those same figures show that in *eighty (80%) percent* of divorce cases in Florida only one party has a lawyer.

Thus, the State has a strong interest in protecting fee awards in divorce cases by statutory or judicial liens such as those authorized by §55.10, Florida Statutes. Often the attorney's fee award in a dissolution of marriage case is less than a reasonable lodestar fee might otherwise be, due to the limitations on the parties respective financial resources. The record in this case shows that Petitioner Louis' ultimate attorney's fee award of $40,000.00 was substantially less than a reasonable lodestar fee might be in another kind of litigation. See, *In Re Coleman*, supra, 152 B.R. 784.

It elevates form over substance to expand the requirements of §55.10(1), adding terms and conditions to creation of a lien not required by the plain language of the statute. *Anderson v. North Florida Production Credit Ass'n*, supra. If the test applied below (i.e., absence of any need for further judicial action no matter how ministerial) determines whether a judgment lien under §55.10, exists, every recorded "money judgment" might fail the test for creation of a lien against real property upon proper recording.

Section 57.115, Florida Statutes, provides that a court may award a judgment creditor attorney's fees against a judgment debtor "in connection with execution on a judgment." The court may consider "[w]hether the judgment debtor has attempted to avoid or evade the payment of the judgment . . . " Thus, all final money judgments may

be the subject of later judicial enforcement proceedings even after the judgment is recorded in the public records.

Additional judicial proceedings necessary to enforce a Florida money judgment has never been the correct test for establishing a lien against real estate under §55.10, Florida Statutes. The only true test is whether the monetary sum set forth in the recorded judgment is determinate and nonmodifiable, a fact Respondent admits in this case.

The decisions of the federal courts below confuse further action to enforce traditional *modifiable* support awards, like child support and periodic alimony awards, which are subject to prospective court modification based on changed circumstances of the parties to the dissolution proceeding, with those provisions of Florida final judgments of dissolution of marriage that cannot be modified, i.e., property awards and final attorney's fees awards, among others. The fact that such property awards and final attorney's fee awards also may be *nondischargeable* under Section 11 U.S.C. §523(a)(5) because the bankruptcy or state court finds them "in the nature of support" does not mean these awards mirror modifiable periodic child support and alimony payments. Final and binding money awards in divorce judgments are subject to protection of Florida's domestic relations and lien law.

If Mr. Coleman moved from Florida to Alaska, Petitioners' final $40,000.00 attorney's fee judgment would be entitled to Full, Faith and Credit by the state of Alaska. *Simons v. Miami Beach First National Bank*, supra. Alaska cannot modify the fee judgment under the federal constitution, since Respondent admits it is subject to *res judicata*.

Once domesticated under provisions of Alaska law, the judgment would be entitled to ministerial enforcement.

The duly recorded $40,000.00 attorney's fee award in the final judgment of dissolution of marriage entered in Dade County, Florida in 1990 was entitled to ministerial enforcement in another county of the state, Columbia County, Florida after its recording in July 1991, and the federal bankruptcy court should not, consistent with this country's constitutional principles, be permitted to interfere with state court final orders. *Cf., Article IV, §1, U.S. Constitution.*

The decisions below constitute the erosion of established Florida domestic relations law. It eradicates broad legal protection afforded an assortment of nonmodifiable money provisions of dissolution of marriage judgments under Florida law by federal judicial expansion of requirements of purely state law, §55.10, Florida Statutes. *Lorenz v. Lorenz,* supra.

This court should grant certiorari to assure federal abstention and inter-sovereign comity which is the backbone of the federal court system. This court should, pursuant to *Fla. Const., Article V, §3(b)(6)* and *Rule 9.150, Rules of Appellate Procedure,* allow the Supreme Court of Florida to address the "novel" issue "determinative of the cause" under the law and policy of the State of Florida. The Supreme Court of Florida decided *Lorenz,* supra, and *Robinson,* supra, and should decide an issue when there is no "controlling precedent" in Florida, as recognized here by the Bankruptcy Court's judgment and opinion. 192 B.R. at page 271.

CONCLUSION

For the reasons stated and based on authorities cited and discussed, this court should grant certiorari and certify the determinative question to the Florida Supreme Court under *Fla. Const., Article V, §3(b)(6)* and *Rule 9.150, Rules of Appellate Procedure* as framed by the United States Bankruptcy Court, Middle District of Florida: " . . . [W]hether a final judgment of dissolution [of marriage] is a final judgment as to the attorney's fees awarded therein"?

Respectfully submitted,

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APPENDIX TO PETITIONER FOR WRIT OF CERTIORARI IN RE: CARL R. COLEMAN a/k/a C. RANDOLPH COLEMAN PAUL A. LOUIS, BETHANY B. COLEMAN V. CHARLES W. GRANT, TRUSTEE

1. Eleventh Circuit decision and judgment dated May 17, 1999.....App. 1
2. Eleventh Circuit Order denying rehearing dated August 6, 1999.....App. 5
3. Final Summary Judgment and Findings of Fact and Conclusions of Law of U.S. Bankruptcy Court for the Middle District of Florida, Jacksonville Division.....App. 7
4. Order of U.S. District Court, Middle District of Florida, Jacksonville Division.....App. 19
5. Article V, Section 3(b)(6), Florida Constitution.....App. 28
6. Section 55.10(1), Florida Statutes.....App. 28
7. 11 U.S.C. Section 101(36) & (37).....App. 29
8. Final Judgment of Dissolution of Marriage dated July 9, 1990.....App. 30
9. Defendants' Request for Admissions.....App. 40
10. Plaintiff's Response to Request for Admissions.....App. 43

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2560

D.C. Docket No. 95-CV-476-J-99
91-6155-BKC-3F7/93-00255A-Adv.

IN RE:

CARL R. COLEMAN,
a.k.a. C RANDOLPH COLEMAN, etc.,

Debtor.

PAUL A. LOUIS, BETHANY B. COLEMAN,

Plaintiffs-Appellants,

versus

CHARLES W. GRANT, Trustee,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(May 17, 1999)

Before EDMONDSON and BLACK, Circuit Judges, and PAUL*, Senior District Judge.

---

* Honorable Maurice M. Paul, Senior U.S. District Judge for the Northern District of Florida, sitting by designation.

PER CURIAM:

Further action is necessary to enforce the judgment, therefore the Final Judgment of Dissolution of Marriage is not a final order and cannot create a lien under Fla. Stat. ch. 55.10.

AFFIRMED.

United States Court of Appeals
For the Eleventh Circuit

No. 98-2560

District Court Docket Nos. 95-CV-476-J-99
91-6155-BKC-3F7/93-00255A-Adv

IN RE: CARL R. COLEMAN,
a.k.a. C. RANDOLPH COLEMAN, etc.

Debtor.

PAUL A. LOUIS, BETHANY B. COLEMAN,

Plaintiffs-Appellants,

versus

CHARLES W. GRANT, Trustee,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(Filed May 17, 1999)

Before EDMONDSON and BLACK, Circuit Judges, and PAUL*, Senior District Judge.

---

* Honorable Maurice M. Paul, Senior U.S. District Judge for the Northern District of Florida, sitting by designation.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

It is FURTHER ORDERED THAT plaintiffs-appellants pay to the defendant-appellee, the costs on appeal to be taxed by the Clerk of Court.

Entered: May 17, 1999
For the Court:
Thomas K. Kahn, Clerk

By: /s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: AUG 19 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2560

IN RE: CARL R. COLEMAN,
a.k.a. C. Randolph Coleman, etc.,

Debtor.

PAUL A. LOUIS, BETHANY B. COLEMAN,

Plaintiffs-Appellants,

versus

CHARLES W. GRANT, Trustee,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Florida

(Filed Aug. 06, 1999)

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC (Opinion _____, 11th Cir., 19__ ___ F.2d ___).

Before: EDMONDSON and BLACK, Circuit Judges, and PAUL*, Senior District Judge.

PER CURIAM:

---

* Honorable Maurice M. Paul, Senior U.S. District Judge for the Northern District of Florida, sitting by designation.

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ G.L. Edmondson
UNITED STATES CIRCUIT JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

CARL R. COLEMAN,
a/k/a C. Randolph Coleman,
a/k/a Randy Coleman

Debtor.

Case No.
91-6155-BKC-3F7

CHARLES GRANT, Trustee

Plaintiff,

v.

PAUL A. LOUIS and
BETHANY B. COLEMAN

Defendants.

Adversary No.
93-255

FINAL SUMMARY JUDGMENT

This proceeding is before the Court upon a Motion for Summary Judgment (Doc. No. 25) and supporting Memorandum of Law filed by Plaintiff and a Motion for Summary Judgment (Doc. No. 31) and Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendants' Motion for Summary Judgment (Doc. No. 30) filed by Defendants.

Pursuant to the Findings of Fact and Conclusions of Law previously entered in this proceeding, it is

ORDERED, ADJUDGED AND DECREED

1. The Motion for Summary Judgment filed by Plaintiff (Doc. No. 25) is **GRANTED**.

2. The Motion for Summary Judgment filed by Defendants (Doc. No. 31) is **DENIED**.

3. The Trustee's interest in the subject property is free and clear of any interest of Defendants, Paul A. Louis and Bethany B. Coleman by reason of the Final Judgment of Dissolution of Marriage recorded in the Public Records of Columbia County, Florida on July 9, 1991 at Book 0748, Pages 0161 through 0169.

DONE AND ORDERED this 11th day of April, 1995 at Jacksonville, Florida.

/s/ Jerry A. Funk
JERRY A. FUNK
United States Bankruptcy
Judge

Copies to:

Paul Louis, Esq., Attorney for Defendants
Anne Payne, Esq., Attorney for Plaintiff
Charles W. Grant, Trustee/Plaintiff

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

CARL R. COLEMAN,
a/k/a C. Randolph
Coleman, a/k/a Randy
Coleman

Debtor.

Case No. 91-6155-BKC-3F7

CHARLES GRANT,
Trustee

Plaintiff,

v.

PAUL A. LOUIS and
BETHANY B. COLEMAN

Defendants.

Adversary No. 93-255

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This proceeding is before the Court upon a Motion for Summary Judgment (Doc. No. 25) and supporting Memorandum of Law filed by Plaintiff and a Motion for Summary Judgment (Doc. No. 31) and Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendants' Motion for Summary Judgment (Doc. No. 30) filed by Defendants.

FINDINGS OF FACT

Defendant, Bethany B. Coleman, is the former spouse of the Debtor, Carl R. Coleman. A Final Judgment of Dissolution of Marriage was entered on July 9, 1990 and recorded in the Public Records of Columbia County, Florida on July 9, 1991 at Book 0748, Pages 0161 through 0169. Defendant, Paul Louis is an attorney who represented Defendant, Bethany B. Coleman in the dissolution proceedings. Among other marital issues, the Final Judgment of Dissolution of Marriage awarded attorney's fees to Bethany Coleman. Paragraph VI of the Final Judgment of dissolution of Marriage stated:

> VI. Attorney's Fees
>
> The next issue to be decided is the husband's liability for an amount to the wife's attorney's fees. The Court finds that the husband shall be responsible for a reasonable attorney's fee for the wife's attorney.
>
> * * *
>
> However, based upon the ability of the husband to pay, and on the generalized formula set in *Travieso v. Travieso, supra*, the Court hereby orders the husband to pay to the wife's attorney the sum of $40,000.
>
> This sum shall be paid in quarterly installments of $2,500 each, the first installment being due September 15, 1990.

The Final Judgment of Dissolution of Marriage was the subject of a plenary appeal to the District Court of Appeal, Third District, and was affirmed on or about November 14, 1991.

The Debtor filed a petition in bankruptcy on November 22, 1991. In a separate adversary proceeding, Paul A. Louis v. Carl R. Coleman, Adversary No. 92-204, the Court determined that all attorney's fees assessed against the Debtor in the dissolution proceeding survived the bankruptcy discharge, pursuant to the provisions of 11 U.S.C. § 523(a)(5).

The chapter 7 Trustee of the Debtor's Bankruptcy Estate has now filed this adversary to determine the validity, extent or priority of an asserted lien against property of the estate. Defendants' assert that the recorded Final Judgment of Dissolution of Marriage is a lien on real property of the Debtor in Columbia County, pursuant to Fla. Stat. § 55.10. The Trustee maintains that no such lien exists and that all of the Debtor's interest in the real property is available to the estate, and that the Trustee is entitled to sell the property free of the asserted lien under 11 U.S.C. § 363(f)(4).

The sole issue presented for determination in both the Plaintiff's and Defendants' Motions for Summary Judgment is whether the $40,000 attorney's fee award is a judgment lien under Fla. Stat. § 55.10.

CONCLUSIONS OF LAW

Florida Statute, Section 55.10 is the general lien statute for the state of Florida. It provides:

> (1) A judgment, order, or decree becomes a lien on real estate in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, whichever is maintained at the time of recordation, and it

> shall be a lien for a period of 7 years from the date of the recording
>
> . . . .

It is axiomatic that a judgment must be a "final" judgment for it to create a lien under a general lien statute. Execution is not permitted on judgments that do not determine with finality the rights and liabilities of the parties. *Shakarian v. Daum*, 561 So. 2d 1222, 1223, (Fla. 2 DCA 1990). An interlocutory or declaratory judgment would not be final in the sense needed to create a lien on real property. "A final judgment is one that determines the rights of the parties and disposes of the cause on its merits leaving nothing more to be done other than to enforce the judgment." *Donaldson Eng'g, Inc. v. Plantation*, 326 So. 2d 209, 210 (Fla. 4th DCA 1976). The fact that a document is entitled "Final Judgment" does not conclusively establish that it is, indeed, a final judgment. *Chipola Nurseries, Inc. v. Division of Admin., State Dep't of Transp.*, 335 So. 2d 617, 618 (Fla. 1st DCA 1976). "An order is not final where a question remains open for judicial determination." *In Re Walsh (Ewers v. Walsh)*, 123 B.R. 925, 928 (Bankr. M.D. Fla. 1991) (Corcorah, J.).

Some courts in this circuit have decided that so-called "magic" words, such as "for which let execution issue" are not required to make a judgment final. *Walsh, supra* at 928 (holding that failure to include the "magic" language of standard form books is not fatal to a determination that an order is a final judgment.) *Du Breuil v. Regnvall*, 527 So. 2d 249 (Fla. 3rd DCA 1988) (explaining that execution of a judgment should not depend on the judgment containing the "archaic" – but customary – words "for which let execution issue). *Chan v. Brunswick*

Corp., 388 So.2d 274 (Fla. 4th DCA 1980) (holding that words "for which let execution issue" are not essential to finality of judgment). *Haines City v. Allen*, 549 So. 2d 678 (Fla. 2d DCA 1989) (stating that language is not essential to final judgment). Plaintiff and Defendants, in their Memorandums submitted to the Court, agree that "magic" words are not necessary to create a final judgment. Although not dispositive of the case at bar, this Court would not so easily dismiss the importance of having the form language in an order, indicating to the reader that it is intended to be a final judgment. The Final Judgment of Dissolution of Marriage at issue in this case did not contain any language resembling the "for which let execution issue" which is customary, in the section awarding attorney's fees to the Defendants. The Court will not determine the finality of the judgment at issue on this basis along, but believes that it is noteworthy.

This main issue for determination can be distilled even further to, whether or not the Final Judgment of Dissolution of Marriage was a final judgment as to the attorney's fees awarded in it, so that it could create a lien on real property, once recorded. Although there are a multitude of cases regarding the determination of final judgments, it appears to be a novel question of law in this state and circuit, as to whether a final judgment of dissolution is a final judgment as to the attorney's fees awarded therein. In *Snoddy v. NCNB Nat'l Bank*, 575 So. 2d 231 (Fla. 4th DCA 1991), the Court held that an order awarding attorney's fees did not create a judgment lien, because the order was a nonrecordable instrument. However, in its one paragraph opinion, the Court did not explain why it was a nonrecordable instrument, merely

citing Fla. Stat.§§ 55.10 and 28.29.[1] Therefore, this case provided little guidance for the issue at hand.

Other courts across the country have dealt with judgment liens created by final judgments of dissolution. In *Dunn v. Thompson*, 529 N.E.2d 297 (Ill. App. Ct. 1988), the court held that a final judgment of dissolution did not create a judgment lien for purposes of a lump sum property settlement awarded in it. The wife had been awarded $30,000 as a property settlement upon dissolution of her marriage. When her former husband did not fulfill his obligation, she attempted to foreclose upon real property owned by her former husband, on the basis that a judgment lien and been created under the Illinois general lien statute, when the final judgment of dissolution was recorded. The court stated that there are two qualifications a judgment must possess in order to create a lien: (1) it must be final, valid, and for a definite amount of money; and (2) it must be such a judgment that execution may issue thereon. The court held that the dissolution order could not be classified as a judgment for purposes of the judgment lien provisions, stating that "without a judgment specifically evidencing a monetary obligation, there is no judgment for purposes of the judgment lien statute." *Id.* at 299. The court noted that the finality of the dissolution judgment was questionable, as it had already been modified once to extend the payment deadline for the property settlement. Additionally, the dissolution judgment itself made no mention of the creation of a lien.

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[1] Florida Statute § 28.29 provides in pertinent part: "Orders of dismissal and final judgment of the courts in civil actions shall be recorded in official records. . . . "

A similar issue was also addressed in *Bryan v. Nelson*, 884 P.2d 252 (Ariz. Ct. App. 1994), in which the court held that a decree of dissolution did not create a lien under the Arizona general lien statue. The former husband had been awarded the marital home, and the former wife was awarded the sum of $20,000 from the proceeds of the sale of the home. When the former husband defaulted on the mortgage, the bank moved to foreclose. The former wife of the defendant brought a declaratory action to establish that her dissolution decree made her holder of a first lien against the home. The court held that "absent specific language creating an equitable lien, a divorce decree that orders the payment of money at some future time is not conclusive enough to support a general lien under [the Arizona general line state.]" *Id.* at 255. The court reiterated that "divorce decrees ordering future payments . . . do not qualify as final, conclusive judgments for purposes of creating a judgment lien. *Id.*

Additionally, in *Uhrich v. Uhrich*, 362 N.E.2d 1163 (Ind. Ct. App. 1977), the court refused to find that a divorce judgment created a judgment lien for unpaid alimony. The former wife sought to have the unpaid balance of alimony declared a lien on her former husband's real estate. The court stated that while the alimony judgment was for a gross sum, it was not then due and payable and subject to execution, because it was to be paid in monthly payments. Therefore, it did not create a judgment lien under the general lien statute of Indiana.

Although, all of these cases dealt with judgment liens in the realm of support payments, and not the awarding of attorney's fees in divorce, the Court feels that these cases are analogous to the case at bar. A Final Judgment

of Dissolution of Marriage is final as to the marriage it is dissolving, but it is not a "final judgment" as to anything else. Alimony and child support are inherently modifiable, so they are not "final" in the sense that they could support a lien. In the instant case, a sum certain of attorney's fees was awarded to Defendant Coleman. That sum is not modifiable. However, the attorney's fees are analogous to a property settlement awarded in a dissolution decree. The purpose of the property settlement in Florida is to "equitably distribute" the couple's property acquired during the marriage. The amount of the property settlement is not modifiable. Nevertheless, as in *Dunn v. Thompson, supra* at 297, where the court found that a lump sum property settlement awarded in a divorce degree could not support a general lien, this Court does not believe that the dissolution decree can create a lien under the Florida general lien statute. Similarly, in *Bryan v. Nelson, supra* at 252, one spouse had been awarded a lump sum of $20,000 from the process of the sale of the marital home. The court found that this did not create a lien under the general lien statute of that state. In both of these cases, the award was a sum certain that was not modifiable as to amount, but in both cases the respective courts found that the dissolution decree did not create a lien for these awards.

In the instant case, the award of $40,000 in attorney's fees was payable in quarterly installments of $2,500, meaning over a period of four years. The Final Judgment of Dissolution of Marriage did not expressly create any lien on any real property of the Debtor. This Court agrees with the court in *Bryan v. Nelson, supra* at 255 that "divorce decrees ordering future payments . . . do not

qualify as final, conclusive judgments for purposes of creating a judgment lien."

Unlike a final monetary judgment, where a debt is already owed, and the Court simply orders judgment and execution on the debt, the attorney's fees were not owed until they were awarded in the Final Judgment of Dissolution of Marriage. There was no debt until it was created by the Final Judgment. Once the debt was created, and once the Debtor defaulted on the quarterly payment obligation, Defendants could have gone back to court to obtain a final executable monetary judgment, that once recorded, would have created a lien on the real property of the Debtor. The Defendants did not obtain such a judgment, and this Court does not believe that the decree of dissolution of marriage was a final judgment that could create a lien on real property pursuant to Fla. Stat. § 55.10. The Final Judgment of Dissolution of Marriage created the debt; it did not order execution on the debt, nor did it create a lien to collateralize the debt.

Accordingly, the Plaintiff's Motion for Summary Judgment will be granted, and the Defendants' Motion for summary Judgment will be denied. A separate final judgment will be entered in accordance with the foregoing.

DATED this 11th day of April, 1995 at Jacksonville, Florida.

/s/ Jerry A. Funk
JERRY A. FUNK
United States Bankruptcy
Judge

Copies to:

Paul Louis, Esq., Attorney for Defendants
Anne Payne, Esq., Attorney for Plaintiff
Charles W. Grant, Trustee/Plaintiff

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE: CARL R. COLEMAN,
a/k/a C. Randolph Coleman
a/k/a Randy Coleman,

Debtor.

BETHANY B. COLEMAN, PAUL LOUIS,

Appellants,

V. CASE NO. 95-476-Civ-J-21

CHARLES W. GRANT, Trustee,

Appellee.

---/

ORDER

(Filed Mar. 18, 1998)

This cause comes before the Court on an appeal from the Final Summary Judgment, dated April 11, 1995, of the United States Bankruptcy Court for the Middle District of Florida. The Bankruptcy Court granted Trustee Charles Grant's Motion for Summary Judgment and denied Defendants' Paul Louis and Bethany Coleman's Motion for Summary Judgment. The Bankruptcy Court found that the Debtor's recorded Final Judgment of Dissolution of Marriage, containing a $40,000 attorneys' fee award to the debtor's former wife's attorney, did not create a lien on real property pursuant to § 55.10, Fla. Stat.

I. Jurisdiction

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 158(a). That statute provides, in pertinent part, that "(t)he district court of the United States shall have jurisdiction to hear appeals (1) from final judgments, orders, and decrees . . . of bankruptcy judges. . . ."

II. Issue on appeal

> Whether a final judgment of dissolution of marriage, containing an attorneys' fees award to the debtor's former wife, created a judgment lien on real property once recorded in the public records, pursuant to § 55.10, Fla. Stat.

III. Standard of appellate review

The District Court sits as an appellate court in an appeal of a bankruptcy court decision. *In re Williamson,* 15 F.3d 1037, 1038 (11th Cir. 1994). Sitting in its appellate capacity, the Court makes no independent factual findings. *Id.* It applies the clearly erroneous standard to the bankruptcy court's findings of facts but reviews the bankruptcy court's conclusions of law on a *de novo* basis. *Id.*

IV. Facts

The Court adopts and incorporates the following findings of fact recited in the bankruptcy court's Findings of Fact and Conclusions of Law dated April 11, 1995:

> Defendant, Bethany B. Coleman, is the former spouse of the Debtor, Carl R. Coleman. A Final Judgment of Dissolution of Marriage was

entered on July 9, 1990 and recorded in the Public Records of Columbia County, Florida on July 9, 1991 at Book 0748, Pages 0161 through 0169. Defendant Paul Louis is an attorney who represented Defendant Bethany B. Coleman in the dissolution proceeding. Among other marital issues, the Final Judgment of Dissolution of Marriage awarded attorney's fees to Bethany Coleman. Paragraph VI of the Final Judgment of Dissolution of Marriage stated:

> VI. Attorney's Fees
>
> The next issue to be decided is the husband's liability for an amount of the wife's attorney's fees. The Court finds that the husband shall be responsible for a reasonable attorney's fee for the wife's attorney.
>
> * * *
>
> However, based upon the ability of the husband to pay, and on the generalized formula set in *Travieso v. Travieso, supra,* the Court hereby orders the husband to pay the wife's attorney the sum of $40,000.
>
> This sum shall be paid in quarterly installments of $2,500 each, the first installment being due September 15, 1990.

The Final Judgment of Dissolution of Marriage was the subject of a plenary appeal to the District Court of Appeal, Third District, and was affirmed on or about November 14, 1991.

The debtor filed a petition in bankruptcy on November 22, 1991. In a separate adversary proceeding, *Paul A. Louis v. Carl R. Coleman,* Adversary No. 92-204, the Court determined that all attorney's fees assessed against the Debtor in

> the dissolution proceeding survived the bankruptcy discharge, pursuant to the provisions of 11 U.S.C. § 523(a)(5).
>
> The Chapter 7 Trustee of the Debtor's Bankruptcy Estate has now filed this adversary [proceeding] to determine the validity, extent or priority of an assessed lien against property of the estate. Defendants assert that the recorded Final Judgment of Dissolution of Marriage is a lien on real property of the Debtor in Columbia County, pursuant to Fla. Stat. § 55.10. The Trustee maintains that no such lien exists and that all of the debtor's interest in the real property is available to the estate, and that the Trustee is entitled to sell the property free of the asserted lien under 11 U.S.C. § 363(f)(4).

In the Conclusions of Law portion of the April 11, 1995 order, the bankruptcy court noted:

> In the instant case, the award of $40,000 in attorney's fees was payable in quarterly installments of $2,500, meaning over a period of four years. The Final Judgment of Dissolution of Marriage did not expressly create any lien on any real property of the Debtor. This Court agrees with the court in *Bryan v. Nelson,* [884 P.2d 252, 255 (Ariz. App. 1994)] that "divorce decrees ordering future payments . . . do not qualify as final, conclusive, judgments for purposes of creating a judgment lien."
>
> Unlike a final monetary judgment, where a debt is already owed, and the Court simply orders judgment and execution of the debt, the attorney's fees were not owed until they were awarded in the Final Judgment of Dissolution of Marriage. There was no debt until it was created

> by the Final Judgment. Once the debt was created, and once the Debtor defaulted on the quarterly payment obligation, Defendants could have gone back to court to obtain a final executable monetary judgment, that once recorded, would have created a lien on the real property of the Debtor. The Defendants did not obtain such a judgment, and this Court does not believe that the decree of dissolution of marriage was a final judgment that could create a lien on real property pursuant to Fla. Stat. § 55.10. The Final Judgment of Dissolution created the debt; it did not order execution on the debt, nor did it create a lien to collateralize the debt.

By separate order dated April 11, 1995, the bankruptcy court granted Final Summary Judgment for the Trustee, denied Defendants' Motion for Summary Judgment, and found that:

> The Trustee's interest in the subject property is free and clear of any interest of Defendants, Paul A. Louis and Bethany B. Coleman by reason of the Final Judgment of Dissolution of Marriage recorded in the Public Records of Columbia County, Florida on July 9, 1991 at Book 0748, Pages 0161 through 0169.

Defendants Paul Louis and Bethany Coleman filed a Petition for Rehearing of the April 11, 1995, order which the bankruptcy court denied by order dated April 24, 1995. Thereafter, Defendants Paul Louis and Bethany Coleman (hereinafter "appellants") filed this appeal from the bankruptcy court's orders.

Appellants have filed a Motion for Attorney's Fees (Dkt. 13) asserting that "they are entitled to fees in this

proceeding for contesting the discharge of their claims and other claims in this Court" and that attorney's fees are allowable "because underlying Florida State law authorizes attorney's fees in family litigation."

V. Discussion

Appellants contend that the bankruptcy court erred in granting final summary judgment for the Trustee and determining that, as a matter of law, the award of attorney's fees in the final judgment of dissolution of marriage was not a lien on the real property owned by the debtor. Appellants assert that pursuant to § 55.10(1), Fla. Stat., the final judgment containing the $40,000 award became a lien on the debtor's real property when the certified copy of the final judgment was recorded in the official records of Columbia County more than ninety days prior to the filing of the bankruptcy proceeding. Appellants further assert that the bankruptcy judge – in determining that the judgment was not final with regard to the attorney's fee award – failed to comply with the summary judgment standard requiring all evidence and reasonable inferences derived therefrom to be viewed in the light most favorable to the non-moving party. Appellants contend that the judgment was final because "all judicial labor with respect to attorney's fees had been completed and nothing was left to be done between the parties except compliance or enforcement." Appellants contend that the bankruptcy judge confused the concepts of finality and enforcement of a judgment. They claim that the fact that the attorney's fee amount was payable in quarterly installments of $2,500 is an issue of enforcement and does not affect the entitlement to a judgment lien in the total

amount of $40,000 for the former wife's attorney's fees. The appellants urge the Court to examine the reasoning expounded in the dissenting opinion of the Indiana Third District Court of Appeals' decision in *Uhrich v. Uhrich*, 362 N.E. 2d 1163 (Ind. Ct. App. 1977).

In response, the Trustee contends that the bankruptcy court correctly determined that at the time the judgment of dissolution was entered, the obligation of the debtor to pay the former wife's attorney's fees had not matured. Moreover, the Trustee points out that the attorney's fee award provision in the divorce decree was a matter incident to the dissolution of the parties' marriage and was not intended to create an executable instrument. The Trustee asserts that the out-of-state cases relied on by the bankruptcy court for guidance, i.e., *Dunn v. Thompson*, 529 N.E. 2d 297 (Ill. App. 1988), and *Bryan v. Nelson*, 884 P.2d 252 (Ariz. App. 1994), are persuasive authority and that appellants have presented no factually-analogous cases in support of their position.

Section 55.10, Fla. Stat., provides that a final judgment becomes a lien on a defendant's real estate when a certified copy of it is recorded in the official records of the county where the defendant's real property is located. *See Smith v. Venus Condominium Association*, 352 So.2d 1169 (Fla. 1977). In order for a judgment to be final under Florida case law and recordable as a lien against real property, it must determine the rights of the parties and dispose of the case on the merits leaving nothing for the court to do but enforce the judgment. *See In re Walsh*, 123 B.R. 925, 928 (Bankr. M.D. Fla. 1991); *Florida Land Title Co. v. Martinez*, 1995 WL 644217 (M.D. Fla. 1995). Inclusion of

the language "for which let execution issue" is not dispositive of whether an order is a final judgment. *Id.* A judgment is final when nothing further needs to be done except execution on the judgment. *Id.*

The bankruptcy court correctly concluded that the attorney's fee award provision in the parties' dissolution of marriage judgment in this case was not final for purposes of creating a lien on the debtor's property pursuant to § 55.10, Fla. Stat. The attorney's fees provision required the debtor to make incremental payments on specified future dates. Appellants would have to wait until the installments were due and the debtor failed to pay before returning to the court to obtain an executable judgment on the attorney's fees. Since the attorney's fee provision in the parties' dissolution of judgment did not dispose of the payment of attorney's fees issue on the merits and left nothing for the court to do but execute it, it was not "final" for purposes of creating a lien pursuant to § 55.10, Fla. Stat. The bankruptcy court properly granted the Trustee's Motion for Summary Judgment.

As to appellants' Motion for Attorney's Fees (Dkt. 13), this Court is without authority to award attorney's fees for this appeal. *See Shearer v. Shearer,* 124 B.R. 862 (N.D. Fla. 1990) (bankruptcy court without authority to award attorney's fees; state court must determine whether debtor should pay the ex-spouse's attorney's fees arising in adversary proceeding); *In re Harrell,* 754 F.2d 902 (11th Cir. 1985) (bankruptcy court plays limited role in domestic relations matters and will not determine the level of a former spouse's need for support).

According, it is **ORDERED**:

1. The bankruptcy court's Final Summary Judgment order dated April 11, 1995, is **AFFIRMED**.

2. Appellants' Motion for Attorney's Fees (Dkt. 13) is **denied**.

3. Any other pending motions are **denied.**

4. The Clerk is **directed** to close this file.

DONE AND ORDERED, at Jacksonville, Florida, this 18th day of March, 1998.

/s/ Ralph W. Nimmons, Jr.
RALPH W. NIMMONS, JR.
UNITED STATES
DISTRICT JUDGE

Copies to: Counsel of record and Unrepresented Party, if any
Denise Seymour, Courtroom Deputy Clerk
Margaret Costa, Judicial Assistant

ARTICLE V, SECTION 3(b)(6)
FLORIDA CONSTITUTION Art. 5 § 3

(b) Jurisdiction. – The supreme court:

* * *

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

* * *

SECTION 55.10(1), FLORIDA STATUTES

55.10. Judgments, orders, and decrees; lien of all, generally; extension of liens; transfer of liens of security

(1) A judgment, order, or decree becomes a lien on real estate in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, whichever is maintained at the time of recordation, and it shall be a lien for a period of 7 years from the date of the recording provided that the judgment, order, or decree contains the address of the person who has a lien as a result of such judgment, order, or decree or a separate affidavit is recorded simultaneously with the judgment, order, or decree stating the address of the person who has a lien as a result of such judgment, order, or decree. A judgment, order, or decree does not become

a lien on real estate unless the address of the person who has a lien as a result of such judgment, order, or decree is contained in the judgment, order, or decree or an affidavit with such address is simultaneously recorded with the judgment, order, or decree.

* * *

---

11 U.S.C. § 101(36) & (37)

§ 101. Definitions

In this title –

* * *

(36) "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

(37) "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation;

* * *

IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR
DADE COUNTY,
FLORIDA

FAMILY DIVISION

CASE NO. 89-29708 FC 30

IN RE: THE MARRIAGE OF
C. RANDOLPH COLEMAN,

Petitioner/Husband,

and

BETHANY BALDWIN COLEMAN,

Respondent/Wife.

FINAL JUDGMENT

(Filed Jul. 9, 1990)

THIS CAUSE came on before me for non-jury trial on May 9 and 10, 1990, and June 5, 20, 21 and 22, 1990. This Court has heard the testimony of the parties and their witnesses, examined the exhibits introduced into evidence, heard endless argument of counsel and is otherwise fully advised in the premises.

The parties were married on May 27, 1983. They have one child, Carole Jacqueline, born October 4, 1985. The husband is 40 years of age and the wife is 39 years of age.

The husband was formerly a C.P.A. and is presently an attorney with his own P.A.

The wife attended 3 years of college and subsequently took various insurance courses. She is a licensed insurance agent, and was employed by the Baldwin Insurance Agency until March 1988. She also worked as a claims adjuster and held a license to sell securities.

The parties have agreed that there will be shared parental responsibility for their minor daughter, with the wife as primary residential parent. The parties have entered into a detailed custody and visitation agreement.

The issues to be decided by the Court are as follows:

1. Whether the wife is entitled to alimony, and if so, the nature and amount thereof.

2. The amount of child support.

3. Equitable distribution of the marital assets of the parties and determination of which assets are 'marital assets'.

4. Attorneys fees.

Based upon the foregoing, the Court finds and orders as follows:

I. Dissolution of Marriage:

The Court finds that the marriage is irretrievably broken, and that the husband has been a resident of Dade County, Florida, for more than 6 months prior to the filing of the petition herein. The marriage between parties is hereby dissolved.

II. Shared Parental Responsibility and Visitation:

Visitation:

The Courts adopts herein the parties Custody and Visitation Agreement, en haec verba.

III. Child Support

The husband shall pay the wife the sum of $1,200.00 per month as child support, the first payment being due August 1, 1990, and a like sum on the 1st day of each consecutive month thereafter, until the minor child reaches the age of 18 years, dies, marries or becomes self-supporting, whichever shall first occur.

All payments shall be made payable to Clerk, Circuit and County Court and forwarded to:

Central Depository
15th Floor
140 W. Flagler St.
Miami, Fl. 33130

Payments shall be made by cash, check or money order. The case number shall be included in each payment.

The husband shall further provide medical, health and dental insurance for the minor child, and be responsible for all reasonable medical expenses incurred by the minor child not covered by insurance.

IV. Alimony

The wife is seeking an award of rehabilitative alimony. The parties were married in May, 1983, and the

wife worked full time until March 1988. She is an intelligent, attractive and healthy young woman with insurance licenses and employment experience. She is one of the few women members of the Orange Bowl Committee and is an active participant in many community organizations and activities. The wife has indicated she has no desire to resume any employment, but prefers to remain home as a full time mother.

The wife has the education, intellect, experience and ability to work competitively in the market place. The purpose of rehabilitative alimony is just that, to rehabilitate. As such, it is not warranted by the facts of this case, and accordingly, the husband shall not be required to pay any alimony to the wife.

V. Equitable Distribution

This is a marriage of short duration. It is the intent of the Court to distribute the marital assets of the parties in as equal a manner as possible.

A. The Marital Home:

The parties purchased the marital home July 15, 1983, for a purchase price of $180,000. Title is in both their names. The wife advanced $5,000.00 of her pre-marital funds towards the down payment on the home, and the husband advanced $25,000.00 from the sale of his North Dade home. The husband claims a special equity in the marital home.

Pursuant to Florida Statute 61.075(3)(a)5, the husband has the burden of proving first that a non-marital

asset was used to acquire the property. This he has done. Secondly, he has the burden of disproving the presumption, created by the statute, of a gift. This he has not done. Consequently, the husband's claim for a special equity is denied.

The next problem is the valuation of the home. The Court heard the testimony of two 'experts', which testimony was as diverse as it was ludicrous.

The husband's 'expert' valued the home at $279,000.00, testifying that location has no effect on the value of real property. The wife's 'expert' valued the home at $175,000.00, below the sale price. The Court, as trier of the facts, has the option to accept or reject such testimony, or give it the weight the Court feels it deserves. The Court places a value on the marital home of $220,000.00. There are two mortgages presently existing in the total amount of $142,000.00. This means there is a total present equity in the home of $78,000.00, and each party's individual equity in the home is $39,000.00.

As part of its overall plan of equitable distribution of marital property, the Court hereby awards the husband's 1/2 interest in the marital home to the wife, together with all furnishings, fixtures, art work, clothes, jewelry, china, crystal and silver which remain in the home. The husband shall execute any papers necessary to effectuate this transfer within 30 days from the date of this judgment. The wife shall be responsible for payment of the mortgages on the marital home, as well as all other expenses relating to the home.

B. Husband's P.A.

The testimony as to the value of the husband's professional association was a [sic] sparse as it was diverse. Taking into consideration all aspects presented, excluding goodwill (which may or may not exist), the Court finds the value of the P.A. to be $75,000.00. The wife is entitled to one half this value, or $37,500.00. As part of its over all scheme of equitable distribution, the Court awards the full value of the P.A. to the husband. The Court further awards the husband all furniture, furnishings, art work and equipment located at the husband's law office, as well as the furnithre, [sic] electronics and such previously removed by the husband from the marital home.

The Court denies the wife's request to reserve jurisdiction over the issue of the value of 'goodwill' in the husband's P.A. Although *Thompson vs. Thompson,* 546 So.2d 99 (Fla. 4th D.C.A. 1989) is being considered by the Supreme Court, this Court is bound to follow the law as it exists at the time of trial, and is further bound by the decision in *Moebus vs. Moebus,* 529 So.2d 1163 (Fla. 3rd D.C.A. 1988).

C. Certificate of Deposit

This Certificate of Deposit is the wife's pre-marital asset which she pledged as collateral for the husband's loan at Sun Bank. The Certificate of Deposit is awarded to the wife, and the husband is ordered to obtain the release of said CD as collateral within 90 days from the date hereof, so that the wife may have the same free and clear for her own unrestricted use.

D. I.R.A.'s

Each party shall retain any I.R.A. in their own name.

E. Child's Custodial Account

The wife's grandmother gave $10,000.00 per year for the minor child of the parties. The parties took a portion of those gifts, and established a custodial account for the daughter, which is in the husband's name. The husband shall, within 30 days from the date of this judgment, account for said funds to the wife, and put the funds in the name of the wife in trust for the minor child.

F. Wife's Cash

There is approximately $12,500.00 in the wife's savings and $3,000.00 in Jacqueline's savings account. These are non-marital assets and are awarded as such to the wife.

G. Mortgage

The $10,000.00 mortgage note the wife owns is a loan between her father and herself and is a non-marital asset belonging to the wife.

H. Automobile

The parties own a 1988 Cadillac, which is a marital asset and is used by the husband. The car is awarded to the husband. The husband is required to reimburse the wife $386.90 representing one week's rental expenses for the week she did not have use of the Ford Bronco after Memorial Day 1990.

I. Riviera Country Club Membership

This club membership shall belong to the wife.

J. Life Insurance

The cash value on Jack Baldwin's policy is a non-marital asset and belongs to the wife.

K. R A M C O

This is a marital asset in joint names. Since the husband is paying off (or otherwise securing) the Sun Bank loan, this asset is awarded to the husband.

L. Lake City Realty

This is a non-marital asset and belongs to the husband.

M. Stocks

All stocks which the wife brought into the marriage are non-marital assets and belong to her.

N. Liabilities

The husband shall be responsible for his Finley, Kumble liability and for payment on all credit cards.

O. Bloomingdale Credit Card

The husband shall turn in his present credit card and then may apply for a new card in his own name.

VI. Attorneys Fees

The next issue to be decided is the husband's liability for and amount of the wife's attorneys fees. The Court finds that the husband shall be responsible for a reasonable attorneys fee for the wife's attorney.

The Court heard testimony that at least up to the time of trial the wife had incurred fees exceeding $75,000.00. The evidence in this case shows the husband's net income (before taxes) to be somewhere between $72,000.00 and $86,000.00 per year. When reduced by child support payments, his net income is between $59,000.00 and $71,000.00 per year.

This Court is very conscious of the case of *Travieso vs. Travieso,* 447 So.2d 940 (Fla. 3rd D.C.A. 1984) in which the trial judge was reversed for awarding $27,000.00 attorneys fee to the wife's attorney when the husband's net income was $17,000.00. The appellate court therein set a $9,000.00 fee, noting that the husband did not possess the financial resources to pay the amount awarded by the trial judge. The appellate court did not take into consideration that the large fee awarded by the trial judge resulted from the wife's attorney's actions in creating extended litigation.

It therefore appears that the limitation of the husband's ability to pay must control the amount that he is obligated to pay to the wife's attorney. There is no question that the wife's attorney, one of the outstanding and most experienced members of the matrimonial bar, is entitled to an hourly rate of $250.00 at a minimum. There is no question that he has expended in excess of 160 hours in handling this case. However, based upon the

ability of the husband to pay, and on the generalized formula set in *Travieso vs. Travieso,* supra, the Court hereby orders the husband to pay to the wife's attorney the sum of $40,000.00.

This sum shall be paid in quarterly installments of $2,500.00 each, the first installment being due September 15, 1990.

VII. The Court denies the husband's petition for partition.

VIII. The Court denies the wife's petition for an accounting.

IX. The Court reserves jurisdiction to award costs to the wife, if applicable, and to enforce this judgment.

DONE and ORDERED in Chambers, at Miami, Dade County, Florida, this 9th day of July, 1990.

/s/ Murray Goldman
MURRAY GOLDMAN
Circuit Judge

Copies furnished to:

Marshall B. Elser, Esq.
Paul A. Louis, Esq.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION

Bankruptcy No.
91-06155-3P7

IN RE: CARL R. COLEMAN a/k/a C. RANDOLPH COLEMAN a/k/a RANDY COLEMAN

Debtor.

Adversary Proceeding
#93-255

CHARLES GRANT, TRUSTEE,

Plaintiff,

vs.

PAUL A. LOUIS and BETHANY B. COLEMAN,

Defendants.

REQUEST FOR ADMISSIONS

Defendants, PAUL A. LOUIS and BETHANY B. COLEMAN, pursuant to Rule of Bankruptcy Procedure 7036 and F.R.Civ.P. 36, and Local Rule 2.15, request the Plaintiff to admit or deny the following:

1. The Final Judgment of Dissolution of Marriage alleged in paragraph 8 of the Plaintiff's Complaint was recorded in the Public Records of Columbia County, Florida on 9 July 1991 at Book 0748, Page 0161 through 0169.

2. The Final Judgment of Dissolution of Marriage between the Debtor and the Defendant, Bethany B. Coleman, alleged in paragraph 7 of the Trustee's Complaint was the subject of a plenary appeal to the District Court of Appeal, Third District, and was affirmed on or about 14 November 1991.

3. This Court by a summary judgment has determined the Debtor Carl R. Coleman owes a debt to Defendants in the amount of $40,000 which is an exception to discharge pursuant to 11 U.S.C. §523(a)(5).

4. The $40,000 debt was one of the items considered in Debtor's plenary appeal to the Third District.

5. The $40,000 debt in the Final Judgment cannot be relitigated under precepts of *res judicata.*

6. Pursuant to the terms of paragraph V(L) of the Final Judgment of Dissolution of Marriage the "Lake City Realty" was awarded to Debtor as equitable distribution.

7. Under Florida law, property awarded as an equitable distribution of property rights in a dissolution of marriage proceeding is property to which a lien attaches.

8. Under Florida Law, the language "for which let execution issue" is neither essential to finality of a money judgment nor creation of a judgment lien.

WE HEREBY CERTIFY that a true and correct copy of the foregoing Request for Admissions was served by mail upon **Anne T. Payne, Esq.**, Bergwerk & Payne, Attorneys for Charles Grant, Trustee, P.O. Box 119, Jacksonville, FL 32201; and a copy mailed to **C. Randolph Coleman, Esq.**, Debtor, pro se, One Harbert Center, Suite

310, 7077 Bonneval Road, Jacksonville, Florida 32216 on this 15 June 1993.

SINCLAIR, LOUIS, HEATH, NUSSBAUM & ZAVERTNIK, P.A.
Attorneys for Defendants
1125 Alfred I. duPont Building
169 E. Flagler Street
Miami, Florida 33131
(305) 374-0544

By /s/ Paul A. Louis
PAUL A. LOUIS
Fla. Bar #048402

and By /s/ Evan J. Langbein
EVAN J. LANGBEIN
Fla. Bar #163183

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO. 91-6155-BKC-3P7
ADV.NO. 93-255

In re:

CARL R. COLEMAN
a/k/a C. Randolph Coleman
a/k/a Randy Coleman

Debtor.

CHARLES GRANT, TRUSTEE,

Plaintiff,

vs.

PAUL A. LOUIS and
BETHANY B. COLEMAN

Defendants

PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSIONS

Comes now the plaintiff, through his undersigned attorney, and says in response to defendant's request for admissions:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Without knowledge, therefore denied.

8. Admitted.

/s/ Anne Payne
ANNE PAYNE
Bergwerk & Payne
Florida Bar No. 0475955
Attorney for Plaintiff
Post Office Box 119
Jacksonville, Florida 32201
(904) 353-1533

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Paul A. Louis, Esquire and Evan J. Langbein, Esquire, Sinclair, Louis, Heath, Nussbaum & Zavertnik, P.A., 169 East Flagler Street, Miami, Florida 33131 and Charles Grant, Trustee, 112 W. Adams St., Ste. 1802, Jacksonville, Florida 32202 by United States Mail this 23 day of June, 1993.

/s/ Anne Payne
Attorney